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In the Supreme Court of the United States

OCTOBER TERM, 1957

THE BOROUGH OF RINGWOOD, PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,

PERRY W. MORTON,
Assistant Attorney General,

ROGER P. MARQUIS,
HAROLD S. HARRISON,
Attorneys,
Department of Justice,
Washington 25, D. C.

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OPINIONS BELOW

The opinion of the Court of Appeals (Pet. 83a-86a) is reported at 251 F.2d 145. The opinion of the District Court is reported in 151 F.Supp. 421.

JURISDICTION

The judgment of the Court of Appeals was entered on January 20, 1958 (Pet. 83a). The petition for a writ of certiorari was filed April 22, 1958, an extension of time to that date having been granted by Mr. Justice Brennan. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether a federal mortgage lien is entitled to priority over subsequent municipal tax liens.

STATUTES INVOLVED

The pertinent portions of the statutes relied upon by the petitioner are set out in the petition (Pet. 3-8).

STATEMENT

This is an action brought by the United States against the Ringwood Iron Mines, Inc., and the petitioner, Borough of Ringwood, to foreclose a mortgage and for the recovery of the indebtedness secured by the mortgage. The complaint prayed for judgment, *inter alia*, "barring and foreclosing the defendants and each of them from all equity of redemption in and to said lands" (Pet. 9a).

The facts as summarized by the Court of Appeals are as follows (Pet. 84a): The subject matter of the litigation is a tract of land in the Borough of Ringwood, New Jersey. In 1950 the United States acquired this land from the Reconstruction Finance Corporation. In 1951 the United States conveyed the land to the Ringwood Iron Mines taking back a note for the purchase price secured by a mortgage on the premises for all but a nominal part of the purchase price. The mortgage was duly recorded. Operation of the property as an iron mining enterprise was not successful. Only one, and that a partial, payment was made on the mortgage. There were unpaid real estate taxes to the Borough for part of the year 1953 and in full thereafter. The default in payments on the

mortgage obligation continued and the Government, through the General Services Administration, made several efforts to assist the debtor by extending time of payment and modifying the amounts due. None of these ameliorations brought success to the enterprise. On the 30th of December, 1955, the Collector of Taxes for the Borough sold the real estate for unpaid taxes subject to the right to redeem. On the 23rd of January, 1956, foreclosure proceedings were begun by the United States. A custodial receiver was appointed on the 7th of February, 1956, and discharged March 15, 1957. A judgment of foreclosure was rendered July 2, 1956, and the premises sold by the United States Marshal.

Under date of December 10, 1956, the United States Marshal filed his "Report of Sale" and on December 12, 1956, the District Court's order confirming the sale was filed (Pet. 2a). Thereafter by a deed and bill of sale, both dated December 31, 1956, the properties involved were duly conveyed to the United States.

The District Court granted a motion by the United States for an order which would grant priority to its mortgage lien and an appropriate judgment was thereafter filed (Pet. 80a). The Court of Appeals affirmed the judgment, stating that "It is clear that this case is ruled by *United States* v. *New Britain*, 347 U.S. 81 (1954)" (Pet. 84a).

ARGUMENT

1. While growing out of a somewhat complicated factual situation, the single issue here presented—whether a prior federal mortgage lien is entitled to

priority over subsequent municipal tax liens—has been clearly resolved in favor of such priority, as shown by numerous decisions of this Court.

Government contracts, "or liens which they create or permit, all present questions of federal law not controlled by the law of any State." *United States* v. *Allegheny County*, 322 U.S. 174, 183; *Clearfield Trust Co.* v. *United States*, 318 U.S. 363, 366-367; *United States* v. *Standard Oil Co.*, 332 U.S. 301, 308-310; *Kern-Limerick, Inc.* v. *Scurlock*, 347 U.S. 110, 121-123. Accordingly, the New Jersey statutes relied upon by the petitioner (Pet. 5-8, 15, 17) are not controlling here. As the Court of Appeals stated concerning petitioner's reliance upon the tax sale to it (Pet. 86a): "The short answer is that, whatever may be the rule as to private mortgagees, a sale under state law cannot divert a prior mortgage lien held by the United States. *New Brunswick* v. *United States*, *supra* [276 U.S. 547]."

Since the mortgage lien of the United States was prior in time, it was entitled to priority on that basis. *United States* v. *New Britain*, 347 U.S. 81, 85; *Rankin* v. *Scott*, 12 Wheat. 177, 179; *United States* v. *City of Greenville*, 118 F.2d 963, 966 (C.A. 4); *Paul* v. *United States*, 127 F.2d 64, 66 (C.A. 6).

2. The Court of Appeals also effectively answered petitioner's argument that the equities are such that the United States has been ousted from the precedence to which its lien is entitled under the law (cf. Pet. 12-13, 14-16). With reference to the several efforts by the Government in extending time and easing conditions of payment by the Ringwood Iron Mines

while the local taxes remained unpaid, the Court of Appeals stated (Pet. 85a-86a):

> The Borough was not hurt by the Government's dealing with the debtor. In fact, the citizens of the Borough were presumably helped by anything designed to keep this concern going as an employer in the little community. The Borough does urge that it is dependent upon real estate taxes for the maintenance of its municipal functions and that the tax lien is the only way it can enforce this source of income. No doubt all that is true but we fail to see how these facts affect our legal question. They fall short of a showing that the Government's actions adversely affected the collectibility of the assessment in question. Therefore, the argument that there is an equity preventing application of the rule as stated in *New Britain* is not well founded in this situation.

3. Petitioner's reliance (Pet. 4, 17-19) upon provisions of a federal statute making temporary allowance for payments in lieu of taxes in certain prescribed circumstances (Act of August 12, 1955, 69 Stat. 721, 40 U.S.C. 521-524) is misplaced because the possible availability of such payments from administrative authorities has no effect on lien priorities.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.[1]

J. LEE RANKIN,
Solicitor General.

FERRY W. MORTON,
Assistant Attorney General.

ROGER P. MARQUIS,
HAROLD S. HARRISON,
Attorneys.

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[1] In the event certiorari should be granted, the United States may also contend, as it did in the Court of Appeals, that it has statutory priority under 31 U.S.C. 191.

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